

**AMENDMENT IN THE NATURE OF A  
SUBSTITUTE TO H.R. 1714  
OFFERED BY MR. BLILEY**

Strike all after the enacting clause and insert the  
following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Electronic Signatures  
3 in Global and National Commerce Act”.

**4 TITLE I—VALIDITY OF ELEC-  
5 TRONIC RECORDS AND SIG-  
6 NATURES FOR COMMERCE**

**7 SEC. 101. GENERAL RULE OF VALIDITY.**

8       (a) GENERAL RULE.—With respect to any contract  
9 or agreement entered into in or affecting interstate or for-  
10 eign commerce, notwithstanding any statute, regulation,  
11 or other rule of law, the legal effect, validity, or enforce-  
12 ability of such contract or agreement shall not be denied—

13           (1) on the ground that the contract or agree-  
14 ment is not in writing if the contract or agreement  
15 is an electronic record; or

16           (2) on the ground that the contract or agree-  
17 ment is not signed or is not affirmed by a signature  
18 if the contract or agreement is signed or affirmed by  
19 an electronic signature.

1 (b) AUTONOMY OF PARTIES IN COMMERCE.—With  
2 respect to any contract or agreement entered into in or  
3 affecting interstate or foreign commerce—

4 (1) the parties to such contract or agreement  
5 may establish procedures or requirements regarding  
6 the use and acceptance of electronic records and  
7 electronic signatures acceptable to such parties; and

8 (2) the legal effect, validity, or enforceability of  
9 such contract or agreement shall not be denied be-  
10 cause of the type or method of electronic record or  
11 electronic signature selected by the parties in estab-  
12 lishing such procedures or requirements.

13 **SEC. 102. AUTHORITY TO ALTER OR SUPERSEDE GENERAL**  
14 **RULE.**

15 (a) IN GENERAL.—Except as provided in subsection  
16 (b), a State statute, regulation, or other rule of law en-  
17 acted or adopted after the date of enactment of this Act  
18 may modify, limit, or supersede the provisions of section  
19 101 if such statute, regulation, or rule of law—

20 (1)(A) constitutes an enactment or adoption of  
21 the Uniform Electronic Transaction Act as reported  
22 to the State legislatures by the National Conference  
23 of Commissioners on Uniform State Laws; or

24 (B) specifies the alternative procedures or re-  
25 quirements for the use or acceptance of electronic

1 records or electronic signatures to establish the legal  
2 effect, validity, or enforceability of contracts or  
3 agreements;

4 (2) in the case of a State statute, regulation, or  
5 other rule of law, is enacted or adopted within 4  
6 years after the date of enactment of this Act; and

7 (3) makes specific reference to the provisions of  
8 section 101.

9 (b) EFFECT ON OTHER LAWS.—A State statute, reg-  
10 ulation, or other rule of law (including an insurance stat-  
11 ute, regulation, or rule of law), regardless of its date of  
12 enactment or adoption, that modifies, limits, or supersedes  
13 section 101 shall not be effective to the extent that such  
14 statute, regulation, or rule—

15 (1) discriminates in favor of or against a spe-  
16 cific technology, method, or technique of creating,  
17 storing, generating, receiving, communicating, or au-  
18 thenticating electronic records or electronic signa-  
19 tures;

20 (2) discriminates in favor of or against a spe-  
21 cific type or size of entity engaged in the business  
22 of facilitating the use of electronic records or elec-  
23 tronic signatures;

1           (3) is based on procedures or requirements that  
2           are not specific and or that are not publicly avail-  
3           able; or

4           (4) is otherwise inconsistent with the provisions  
5           of section 101.

6           (c) ACTIONS TO ENJOIN.—Whenever it shall appear  
7           to the Secretary of Commerce that a State has enacted  
8           or adopted a statute, regulation, or other law that is pro-  
9           hibited by subsection (b), the Secretary may bring an ac-  
10          tion to enjoin the enforcement of such statute, regulation,  
11          or rule, and upon a proper showing a permanent or tem-  
12          porary injunction or restraining order shall be granted  
13          without bond.

14   **SEC. 103. SPECIFIC EXCLUSIONS.**

15          The provisions of section 101 shall not apply to—

16               (1) a statute, regulation, or other rule of law  
17               governing the creation and execution of wills, codi-  
18               cils, or testamentary trusts; or

19               (2) a statute, regulation, or other rule of law  
20               governing adoption, divorce, or other matters of  
21               family law.

22   **SEC. 104. DEFINITIONS.**

23          For purposes of this title:

24               (1) ELECTRONIC RECORD.—The term “elec-  
25               tronic record” means a writing, document, or other

1 record created, stored, generated, received, or com-  
2 municated by electronic means.

3 (2) ELECTRONIC SIGNATURE.—The term “elec-  
4 tronic signature” means information or data in elec-  
5 tronic form, attached to or logically associated with  
6 an electronic record by a person or an electronic  
7 agent, that is intended by a party to signify agree-  
8 ment to a contract or agreement.

9 (3) ELECTRONIC.—The term “electronic”  
10 means of or relating to technology having electrical,  
11 digital, magnetic, optical, electromagnetic, or similar  
12 capabilities regardless of medium.

13 (4) ELECTRONIC AGENT.—The term “electronic  
14 agent” means a computer program or an electronic  
15 or other automated means used independently to ini-  
16 tiate an action or respond to electronic records in  
17 whole or in part without review by an individual at  
18 the time of the action or response.

1 **TITLE II—DEVELOPMENT AND**  
2 **ADOPTION OF ELECTRONIC**  
3 **SIGNATURE PRODUCTS AND**  
4 **SERVICES**

5 **SEC. 201. TREATMENT OF ELECTRONIC SIGNATURES IN**  
6 **INTERSTATE AND FOREIGN COMMERCE.**

7 (a) INQUIRY REGARDING IMPEDIMENTS TO COM-  
8 MERCE.—

9 (1) INQUIRIES REQUIRED.—Within 90 days  
10 after the date of the enactment of this Act, and an-  
11 nually thereafter, the Secretary of Commerce, acting  
12 through the Assistant Secretary for Communications  
13 and Information, shall complete an inquiry to—

14 (A) identify any domestic and foreign im-  
15 pediments to commerce in electronic signature  
16 products and services and the manners in which  
17 and extent to which such impediments inhibit  
18 the development of interstate and foreign com-  
19 merce;

20 (B) identify constraints imposed by foreign  
21 nations or international organizations that con-  
22 stitute barriers to providers of electronic signa-  
23 ture products or services; and

1 (C) identify the degree to which other na-  
2 tions and international organizations are com-  
3 plying with the principles in subsection (b)(2).

4 (2) SUBMISSION.—The Secretary shall submit a  
5 report to the Congress regarding the results of each  
6 such inquiry within 90 days after the conclusion of  
7 such inquiry.

8 (b) PROMOTION OF ELECTRONIC SIGNATURES.—

9 (1) REQUIRED ACTIONS.—The Secretary of  
10 Commerce, acting through the Assistant Secretary  
11 for Communications and Information, shall promote  
12 the acceptance and use, on an international basis, of  
13 electronic signatures in accordance with the prin-  
14 ciples specified in paragraph (2) and in a manner  
15 consistent with section 101 of this Act. The Sec-  
16 retary of Commerce shall take all actions necessary  
17 in a manner consistent with such principles to elimi-  
18 nate or reduce, to the maximum extent possible, the  
19 impediments to commerce in electronic signatures,  
20 including those identified in the inquiries under sub-  
21 section (a) for the purpose of facilitating the devel-  
22 opment of interstate and foreign commerce.

23 (2) PRINCIPLES.—The principles specified in  
24 this paragraph are the following:

1 (A) Free markets and self-regulation, rath-  
2 er than government standard-setting or rules,  
3 should govern the development and use of elec-  
4 tronic records and electronic signatures.

5 (B) Neutrality and nondiscrimination  
6 should be observed among providers of and  
7 technologies for electronic records and elec-  
8 tronic signatures.

9 (C) Parties to a transaction should be per-  
10 mitted to establish requirements regarding the  
11 use of electronic records and electronic signa-  
12 tures acceptable to such parties.

13 (D) Parties to a transaction—

14 (i) should be permitted to determine  
15 the appropriate authentication technologies  
16 and implementation models for their trans-  
17 actions, with assurance that those tech-  
18 nologies and implementation models will be  
19 recognized and enforced; and

20 (ii) should have the opportunity to  
21 prove in court or other proceedings that  
22 their authentication approaches and their  
23 transactions are valid.

24 (E) Electronic records and electronic sig-  
25 natures in a form acceptable to the parties



1           should not be denied legal effect, validity, or en-  
2           forceability on the ground that they are not in  
3           writing.

4           (F) De jure or de facto imposition of  
5           standards on private industry through foreign  
6           adoption of regulations or policies with respect  
7           to electronic records and electronic signatures  
8           should be avoided.

9           (G) Paper-based obstacles to electronic  
10          transactions should be removed.

11       (c) FOLLOWUP STUDY.—Within 3 years after the  
12       date of enactment of this Act, the Secretary of Commerce,  
13       acting through the Assistant Secretary for Communica-  
14       tions and Information, shall conduct an inquiry regarding  
15       any State statutes, regulations, or other rules of law en-  
16       acted or adopted after such date of enactment pursuant  
17       to section 102(a), and the extent to which such statutes,  
18       regulations, and rules comply with section 102(b). The  
19       Secretary shall submit a report to the Congress regarding  
20       the results of such inquiry by the conclusion of such 3-  
21       year period and such report shall identify any actions  
22       taken by the Secretary pursuant to section 102(c) and  
23       subsection (b) of this section.

24       (d) CONSULTATION.—In conducting the activities re-  
25       quired by this section, the Secretary shall consult with

1 users and providers of electronic signature products and  
2 services and other interested persons.

3 (e) PRIVACY.—Nothing in this section shall be con-  
4 strued to require the Secretary or the Assistant Secretary  
5 to take any action that would adversely affect the privacy  
6 of consumers.

7 (f) DEFINITIONS.—As used in this section, the terms  
8 “electronic record” and “electronic signature” have the  
9 meanings provided in section 104 of the Electronic Signa-  
10 tures in Global and National Commerce Act.

11 **TITLE III—USE OF ELECTRONIC**  
12 **RECORDS AND SIGNATURES**  
13 **UNDER FEDERAL SECURITIES**  
14 **LAW**

15 **SEC. 301. GENERAL VALIDITY OF ELECTRONIC RECORDS**  
16 **AND SIGNATURES.**

17 Section 3 of the Securities Exchange Act of 1934 (15  
18 U.S.C. 78c) is amended by adding at the end the following  
19 new subsection:

20 “(h) REFERENCES TO WRITTEN RECORDS AND SIG-  
21 NATURES.—

22 “(1) GENERAL VALIDITY OF ELECTRONIC  
23 RECORDS AND SIGNATURES FOR SECURITIES  
24 LAWS.—Except as otherwise provided in this  
25 subsection—

1           “(A) if a contract, agreement, or record  
2           (as defined in subsection (a)(37)) is required by  
3           the securities laws, and is required by other  
4           Federal or State statute, regulation, or other  
5           rule of law to be in writing, the legal effect, va-  
6           lidity, or enforceability of such contract, agree-  
7           ment, or record shall not be denied on the  
8           ground that the contract, agreement, or record  
9           is not in writing if the contract, agreement, or  
10          record is an electronic record;

11          “(B) if a contract, agreement, or record is  
12          required by the securities laws, and is required  
13          by other Federal or State statute, regulation, or  
14          other rule of law to be signed, the legal effect,  
15          validity, or enforceability of such contract,  
16          agreement, or record shall not be denied on the  
17          ground that such contract, agreement, or record  
18          is not signed or is not affirmed by a signature  
19          if the contract, agreement, or record is signed  
20          or affirmed by an electronic signature; and

21          “(C) if a broker, dealer, transfer agent, in-  
22          vestment adviser, or investment company enters  
23          into a contract or agreement with, or accepts a  
24          record from, a customer or other counterparty,  
25          such broker, dealer, transfer agent, investment

1           adviser, or investment company may accept and  
2           rely upon an electronic signature on such con-  
3           tract, agreement, or record, and such electronic  
4           signature shall not be denied legal effect, valid-  
5           ity, or enforceability because it is an electronic  
6           signature.

7           “(2) IMPLEMENTATION.—

8                   “(A) REGULATIONS.—The Commission  
9           may prescribe such regulations as may be nec-  
10          essary to carry out this subsection consistent  
11          with the public interest and the protection of  
12          investors.

13                   “(B) NONDISCRIMINATION.—The regula-  
14          tions prescribed by the Commission under sub-  
15          paragraph (A) shall not—

16                           “(i) discriminate in favor of or against  
17                           a specific technology, method, or technique  
18                           of creating, storing, generating, receiving,  
19                           communicating, or authenticating elec-  
20                           tronic records or electronic signatures; or

21                           “(ii) discriminate in favor of or  
22                           against a specific type or size of entity en-  
23                           gaged in the business of facilitating the  
24                           use of electronic records or electronic sig-  
25                           natures.

1           “(3) EXCEPTIONS.—Notwithstanding any other  
2           provision of this subsection—

3                   “(A) the Commission, an appropriate regu-  
4           latory agency, or a self-regulatory organization  
5           may require that records be filed in a specified  
6           format or formats if the records are required to  
7           be submitted to the Commission, an appropriate  
8           regulatory agency, or a self-regulatory organiza-  
9           tion, respectively; and

10                   “(B) the Commission may require that  
11           contracts, agreements, or records relating to  
12           purchases and sales, or establishing accounts  
13           for conducting purchases and sales, of penny  
14           stocks be manually signed, and may require  
15           such manual signatures with respect to trans-  
16           actions in similar securities if the Commission  
17           determines that such securities are susceptible  
18           to fraud and that such fraud would be deterred  
19           or prevented by requiring manual signatures.

20                   “(4) RELATION TO OTHER LAW.—The provi-  
21           sions of this subsection apply in lieu of the provi-  
22           sions of title I of the Electronic Signatures in Global  
23           and National Commerce Act to a contract, agree-  
24           ment, or record (as defined in subsection (a)(37))  
25           that is required by the securities laws.

1 “(5) DEFINITIONS.—As used in this subsection:

2 “(A) ELECTRONIC RECORD.—The term  
3 “electronic record” means a writing, document,  
4 or other record created, stored, generated, re-  
5 ceived, or communicated by electronic means.

6 “(B) ELECTRONIC SIGNATURE.—The term  
7 “electronic signature” means information or  
8 data in electronic form, attached to or logically  
9 associated with an electronic record, that is in-  
10 tended by the parties to signify agreement to a  
11 contract or agreement.

12 “(C) ELECTRONIC.—The term “electronic”  
13 means of or relating to technology having elec-  
14 trical, digital, magnetic, optical, electro-  
15 magnetic, or similar capabilities regardless of  
16 medium.”.